

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

OCT 26 2004

DOCKET FILE COPY ORIGINAL

TOM PUTMAN

R&ROG

OFFICE OF  
MANAGING DIRECTOR

Eric J. Branfman  
Counsel  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W.  
Suite 300  
Washington, D.C. 20007-5116

Re: Request for waiver of Fiscal Year (FY) 2004  
Regulatory Fees  
Control No. 00000RROG-04-071

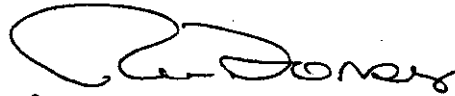
Dear Mr. Branfman:

This letter responds to your request dated August 12, 2004 for waiver of FY 2004 regulatory fees filed on behalf of Corecomm Newco, Inc. and ATX Licensing, Inc. (collectively ATX Companies). In your petition, you state that on January 15, 2004, the ATX Companies filed for protection under Chapter 11 of the United States Bankruptcy Code, and are currently undergoing a reorganization under the supervision of the United States Bankruptcy Court for the Southern District of New York. As evidence, you have submitted a copy of the cover sheet of the petition filed with the court and schedules setting forth the various names of the debtors over the past six years. You state that the cases have been consolidated under *In re ATX Communication, Inc., et al*, Chap. 11 Case No. 04-10214 (PCB). You request a hardship waiver for the ATX Companies because they are presently in bankruptcy.

The Commission will grant waivers of its regulatory fees on a sufficient showing of financial hardship, and evidence of bankruptcy or receivership is sufficient to establish financial hardship. *See Implementation of Section 9 of the Communications Act*, 10 FCC Rcd, 12,759, 12761-62 (1995) (waivers granted for licensees whose stations are bankrupt, undergoing Chapter 11 reorganization, or in receivership). You have submitted evidence establishing that CoreComm Newco, Inc and ATX Licensing, Inc. initiated bankruptcy proceeding on January 15, 2004 and you state that those proceedings still are ongoing. Therefore we grant a waiver of the FY 2004 regulatory fees for the total amount of \$20,503.94 for Corecomm Newco, Inc. and \$129,396.69, for ATX Licensing, Inc.

If you have any questions concerning this letter, please contact the Revenue and Receivable Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger". The signature is fluid and cursive, with a large initial "M" and "R".

Mark A. Reger  
Chief Financial Officer

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August 12, 2004

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AUG 12 2004

VIA COURIER

Federal Communications Commission  
Office of Secretary

Marlene H. Dortch, Secretary  
Federal Communications Commission  
236 Massachusetts Avenue, NE, Suite 100  
Washington, D.C. 20002

**Attn: Office of Managing Director, Regulatory Fee Waiver/Reduction Request**

**RE: Regulatory Fees of CoreComm Newco, Inc. and ATX Licensing, Inc.**

Dear Secretary Dortch:

By this letter, CoreComm Newco, Inc. ("Newco") and ATX Licensing, Inc. ("ATX") (collectively, the "ATX Companies"), for the reasons outlined below, request a waiver of their regulatory fee payments on the grounds of hardship. Attached please find the fee bills sent to the ATX Companies for the submission of 2004 regulatory fees, based on 2003 revenue of the ATX Companies. Under the 2004 regulatory fee schedule, Newco would owe \$20,503.94 in fees and ATX<sup>1</sup> would owe \$129,396.69, in regulatory fee payments.

On January 15, 2004, the ATX Companies, along with numerous other related entities, filed for protection under Chapter 11 of the U.S. Bankruptcy Code, and is currently undergoing a reorganization under the supervision of the U.S. Bankruptcy Court for the Southern District of New York. These cases were consolidated under *In re ATX Communication, Inc., et al*, Chap. 11 Case No. 04-10214 (PCB).

In accordance with past Commission practice, the ATX Companies believe that they are eligible for a hardship waiver of its regulatory fees. As the ATX Companies are presently in bankruptcy, the ATX Companies believe that such a waiver is appropriate.

<sup>1</sup> Please note that the invoice for ATX Licensing, Inc. refers to "CoreComm ATX, Inc." Please note that notation is in error. As indicated by a letter from Eric J. Branfman and Wendy M. Creeden to Hugh L. Boyle, on April 28, 2004, Form 499s filed in the name of CoreComm ATX, Inc. were done so in error. In fact, ATX Licensing, Inc., and not CoreComm ATX, Inc., is the licensed entity and booked the telecommunications revenue that was the basis of the fees in question. This error is currently being rectified through the filing of a revised Form 499. Please note that CoreComm ATX, Inc., an unregulated entity, is also undergoing a reorganization under the terms of the U.S. Bankruptcy Code. Regardless of the name on the invoice, a waiver of regulatory fees is still appropriate for the reasons stated above. A copy of the above-referenced letter is attached for your convenience.

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In the event that the Commission does not believe that a hardship waiver is appropriate, then the ATX Companies believe that the Commission must seek the right to payment from the aforementioned Bankruptcy Court. Under U.S. Bankruptcy law, a debtor cannot pay a debt designated as pre-petition absent approval of the supervising U.S. Bankruptcy Court. If the Commission wishes to make a claim with the supervising court, the Commission must file a proof of claim with the U.S. Bankruptcy Court for the Southern District of New York.

Because regulatory fees are based on prior year revenue, the ATX Companies believe that the entire 2004 regulatory bill is, in fact, a pre-petition debt. As such, the fees in question cannot be paid absent approval of the U.S. Bankruptcy Court.

Moreover, under Commission's rules, a company that has filed for bankruptcy is a new entity. Carriers that file for bankruptcy protection must file a notice of this filing with the Commission. The ATX Companies filed such letters with the Commission on February 17, 2004. In establishing this rule, the Commission noted that a bankruptcy is a *pro forma* transfer of control. In this case, the post-petition ATX Companies were thus established on January 15, 2004, and are not responsible for regulatory fee payments owing as a result of revenue prior to this date.

Under the Commission's Regulatory Fee payment guidelines, a company can request waiver of the payment of the regulatory fees at the time of filing of the regulatory fees. While payment under protest is preferred, companies can withhold payment where payment of the fee would be a hardship for the company in question. Because payment of the fee would be a hardship and could constitute a violation of applicable U.S. Bankruptcy laws, the ATX Companies hereby withhold payment.

The ATX Companies believe that good cause having been shown, that a waiver of its 2004 regulatory fees, on the basis that such fees will cause a financial hardship to a debtor currently in bankruptcy, is appropriate.

If you have any questions in this matter, please contact Douglas Orvis, at 202/945-6941.

Respectfully submitted,



Eric J. Branfman  
Douglas D. Orvis II

Counsel for the ATX Companies

Enclosures

cc: Chris Holt  
John Dragani  
Kathleen Greenan Ramsey